IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7361 OF 2007

Sureshchand Jainarayan Khandelwal.... Petitioner

versus

Mulraj Ratansey & Ors. ..... Respondent.

Mr. P.S.Dani i/b Kaikini Phadke & Associates for the petitioner.
Mr. P.C. Kansara for Respondents 1 and 2.

CORAM; A.P. DESHPANDE, J.
DATED; 04TH OCTOBER, 2007

P.C.;

1. The present petitioner is a tenant against whom the landlord instituted a suit for ejectment and possession. The trial court has decreed the suit and aggrieved by the judgment and decree passed by the Small Causes Court, an appeal is carried to the Appellate Bench of the Small Causes. By the impugned order the Chief Judge has granted stay to the decree for possession, pending consideration of the application for condonation of delay, subject to the condition that the appellant deposits an amount of Rs.15000/- per month from the date of the decree till further orders. It is obvious that the impugned order dated 17-8-2007 is an ad-inteirm order granting stay, pending consideration of the application seeking

condonation of delay. If the delay is condoned, the appeal will be registered and numbered and thereafter the application under Order 41 Rule 5 claiming stay of the decree for possession will be considered by the Appellate Bench.

2. The learned counsel for the petitioner has submitted that the appeal court has relied upon the report of architect which was placed on record by the landlord, wherein it opined that the premises in question would fetch an income of Rs.46,640.50/- per month calculated at the rate of Rs. 72/- per sq.ft. His submission is that without affording an opportunity to the petitioner to contest the architect's report, the appellant has been directed to deposit Rs.15000/- per month.

3. Per contra the learned counsel for the respondent has submitted that the premises in question are about 800 sq. ft., used for commercial purposes, situated at Kalbadevi and thus the said premises are bound to fetch amount more than Rs. 15000/- per month. Be it as it may, I do not propose to interfere with the impugned order as the same is in the nature of ad-interim order passed by the Appellate Bench till passing of the further orders on the application under Order 41 Rule 5 of CPC, which would be taken up for

further orders after the application for condonation of delay is decided. Suffice it to clarify that when the appellate court would proceed to consider the prayer under Order 41 Rule 5, it will be at that stage, that the petitioner will get an opportunity to counter the architect’s report.

4. In the result, the Writ Petition is summarily dismissed.

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